

May 6, 2005

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of *Ex Parte* Meeting, WC Docket Nos. 04-36

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Federal Communications Commission's ("FCC") Rules, this letter serves to provide notice in the above-captioned proceeding of *ex parte* meetings. On May 5, 2005, the undersigned accompanied Mr. Jason P. Talley, Chief Executive Officer, and Mr. Noah K. Wood, Chief Technical Officer, both of Nuvio Corporation ("Nuvio"), to meet with Commissioner Kathleen Abernathy, and Lauren Belvin, Acting Legal Advisor to Commissioner Abernathy. Meetings were also held with Jessica Rosenworcel, Legal Advisor to Commissioner Copps, Michelle Carey, Legal Advisor to Chairman Martin, and Barry Ohlson, Legal Advisor to Commissioner Adelstein. The attached written materials were distributed at the meetings.

Nuvio expressed concern that state legislatures are starting to pass laws that would require VoIP providers to offer E-911 services. While Nuvio explained that as a result of the *Vonage Order* such legislation is preempted, conflicting federal and state obligations as to implementation of VoIP E-911 services would impede the deployment of E-911 services to VoIP customers. Nuvio highlighted that certain legislation also has an extreme anti-competitive impact as it could be interpreted to apply only to those whose primary business is VoIP service and not applicable to incumbent local exchange carriers. Accordingly, any VoIP E-911 order issued by the FCC must make clear that state laws attempting to regulate the provision of E-911 services by VoIP providers are preempted.

Nuvio also discussed the provision of E-911 services in connection with its Voice over Internet Protocol ("VoIP") service. Specifically, Nuvio stated that it is committed to providing E-911 service to its VoIP customers, and explained that it currently provides E-911 services to its customers in approximately 55% of the rate centers where Nuvio has access to numbering resources. The Company provides E-911 service through a CLEC VoIP E-911 solution. However, Nuvio emphasized that there are important limitations associated with the CLEC VoIP E-911 service offerings available in the marketplace today. Specifically, the currently available

CLEC VoIP E-911 solutions are limited in the following respects: (1) it will not work when Nuvio customers are in a fixed location, but use telephone numbers associated with distant rate centers; (2) it will not work for portable VoIP services at all such as those offered by Nuvio; (3) it only allows for the tying of one address per one phone number even though Nuvio enables some customers to have multiple stations in different locations associated with a single telephone number; (4) it is not available as a “standalone” product requiring Nuvio to purchase inbound and outbound services from the CLEC offering a VoIP E-911 product; (5) it is not available in many rate centers throughout the United States; and (6) it is not available in every rate center throughout a service provider’s footprint. Notwithstanding these limitations, it can be effective product for customers that understand the nature of the services limitations. To that end, Nuvio customers receive prominent disclosures and are well aware of the limitations associated with the E-911 capabilities of the service.

Nuvio expressed concern that should the FCC draft a broad order concerning the provision of E-911 services by VoIP providers, VoIP providers will be subject to overwhelming implementation costs, and will face significant technological implementation issues. Importantly, the industry has not developed any technical standards that would function with a portable VoIP service. The lack of standards means that each VoIP provider will be required to develop its own E-911 solution and negotiate with incumbent providers of telephone service, including those located in rural areas, as well as the 6,600 Public Safety Answering Points (“PSAP”), in order to implement the particular solution developed by the VoIP company. The feasibility of such an endeavor is difficult to determine but would unquestionably cost a great deal of money, require a great deal of time, and necessitate an unprecedented level of cooperation from all parties involved including rural carriers that are not required to unbundled any network elements under section 251 of the Telecommunications Act.

Further, Nuvio stressed that the Commission should be careful not to rush to impose NENA’s I2 E-911 initiative at the expense considering an I3 solution. NENA’s I2 solution for VoIP would require the routing of VoIP traffic into the existing E-911 systems and to the correct PSAP with correct ANI and ALI. Mobile VoIP is not supported by this solution beyond base station location identification. In other words, under the I2 solution, if a portable user of VoIP services fails to update their address when using the service outside of the registered location, the call will be routed to the wrong PSAP. Nuvio believes that grafting the existing TDM-based 911 infrastructure on a technologically-advanced IP network would be unwise and require certain VoIP providers like Nuvio to re-design their network architecture. In order to implement the imperfect I2 solution, Nuvio would be required to incorporate TDM facilities in its all IP network, facilities that it does not currently purchase or utilize.

Instead, Nuvio urged the FCC to adopt a hybrid approach allowing for a quicker transition to NENA’s I3 solution. NENA’s I3 solution would require the establishment an end-to-end IP based E-911 system, which would be specifically designed to support VoIP originated call delivery. It would also support mobile VoIP users, and provide the same location information and other relevant data. Over time, the I3 implementation would allow for the delivery of even richer data to PSAPs that would greatly assist first responders and also enable dynamic redundancy where PSAPs from adjacent or distant areas could serve a wholly separate

geographic area in the event the geographically appropriate PSAP became disabled for any reason.

The FCC and the industry should jointly work on a hybrid I3 solution. For example, the I3 solution anticipates that the PSAP receiving the call would be IP-enabled. Instead, an interim I3 approach would be to allow for IP delivery of emergency calls to the incumbent LEC which would then route the call to the appropriate PSAP. All of the steering and location information would be populated prior to delivery to the incumbent LEC so as to require only that the incumbent LEC convert the communication to TDM and transmit the call to the appropriate PSAP based on information contained in the data stream. As PSAPs become IP-enabled, incumbent LECs or VoIP providers could directly route calls to the IP PSAP. This would allow for a phased transition to I3 without requiring VoIP providers to implement a solution that would not work for a significant number of their customers. This solution would be very similar to that currently offered by some CLECs for fixed VoIP services and, as such, is a practical solution.

Nuvio highlighted that any VoIP E-911 solution will be extremely costly and onerous to implement. VoIP providers cannot shoulder the entire burden and the FCC must mandate that incumbent telephone companies allow for access to the elements necessary for VoIP providers to offer service. Further, any timeframe adopted by the FCC must take into account the complexities of the contractual negotiations that must occur, the cost imposed and the necessity of VoIP providers to raise additional capital in order to implement the mandated solution. The FCC must also recognize that any mandate will require nationwide implementation. Non-facilities-based VoIP providers like Nuvio cannot limit their service offerings geographically. CLECs can limit the areas where they offer their service by simply not serving certain areas. Likewise, CMRS providers enter roaming agreements that geographically limit the scope of these services. But portable VoIP providers have no similar ability to limit the geographic scope of their services. Nuvio's service can be used from any rate center or any place in the world where there is a broadband Internet connection. Accordingly, any timeframe adopted by the FCC must take all of these important factors into account.

For these reasons, Nuvio strongly recommends the following. First, if the FCC determines that it is necessary to mandate the provision of E-911 services by VoIP providers, the FCC should adopt a hybrid I3 approach. Second, any timeframe adopted by the FCC must take into account the contractual negotiations, technical complexities, and the cost associated with whatever mandate is adopted. Third, if the FCC is truly looking for some sort of E-911 requirement in the next six months, the order must be limited to fixed VoIP services, i.e., those reasonably *incapable* of portability, it also cannot apply to users of virtual numbering resources, and can only be mandated in those rate centers where there is a CLEC VoIP E-911 solution.

Marlene H. Dortch

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Pursuant the Commission's Rules, this letter is being submitted electronically for filing in the above-referenced proceeding.

Sincerely,

/s/
Ronald W. Del Sesto, Jr.

Counsel for Nuvio Corporation

cc: Commissioner Kathleen Abernathy
Lauren "Pete" Belvin
Jessica Rosenworcel
Michelle Carey
Barry Ohlson